

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNIVERSAL PARAGON
CORPORATION and SUNQUEST
PROPERTIES, INC.,

Plaintiff(s),

v.

INGERSOLL-RAND COMPANY
LIMITED, et al.,

Defendant(s).

AND RELATED CLAIMS.

No. C05-3100 MJJ (BZ)

**ORDER DENYING PLAINTIFF
UNIVERSAL PARAGON CORP.'S
REQUEST FOR AN ORDER
COMPELLING DEPOSITION
ATTENDANCE**

Before me is plaintiff Universal Paragon Corp.'s request for an order compelling the attendance of Mr. Gregory O'Hara at a deposition on January 29, 2007. Following a telephonic discovery conference at which all interested parties were represented by counsel, I find that no further briefing or argument is necessary. I conclude that I cannot issue the requested order.

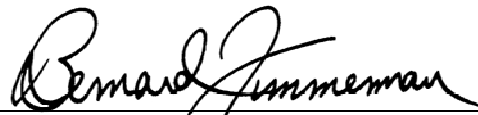
Under the circumstances presented, I would normally grant plaintiff's request. In particular, I do not find persuasive

1 defendant Ingersoll-Rand Co.'s argument that Mr. O'Hara -
2 defendant's lead trial counsel and, thus, a third party to the
3 suit - may refuse to appear at a duly noticed subpoena,
4 without abiding by the procedures set forth in FRCP 45, simply
5 because he believes that his testimony may not be relevant
6 following the resolution of summary judgment proceedings. Nor
7 can it be that defendant's promise to produce Mr. O'Hara at
8 such later time as it wishes excuses Mr. O'Hara's failure to
9 appear.

10 During the conference, however, plaintiff admitted that
11 the discovery cut-off date set by Judge Jenkins has passed.
12 While both parties stated that they had agreed to accommodate
13 certain discovery beyond the cut-off date, I will not enforce
14 an agreement in derogation of Judge Jenkins' deadlines.

15 For the reasons set forth, plaintiff's request for an
16 order compelling Mr. O'Hara's attendance at a deposition is
17 **DENIED.**

18 Dated: January 25, 2007



20 Bernard Zimmerman
21 United States Magistrate Judge

22 G:\BZALL\REFS\UNIVERSAL PARAGON\DISC9.ORDER.wpd
23
24
25
26
27
28